

### **31A-6a-101. Definitions.**

(1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued by an insurance company that has complied with either Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Title 31A, Chapter 14, Foreign Insurers, that undertakes to perform or provide repair or replacement service on goods or property, or indemnification for repair or replacement service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear.

(2) "Nonmanufacturers' parts" means replacement parts not made for or by the original manufacturer of the goods commonly referred to as "after market parts."

(3) (a) "Service contract" means a contract or agreement for the repair or maintenance of goods or property, for their operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances.

(b) "Service contract" does not include mechanical breakdown insurance as defined in Subsection (1).

(4) "Service contract holder" or "contract holder" means a person who purchases a service contract.

(5) "Service contract provider" means a person who issues, makes, provides, administers, sells or offers to sell a service contract, or who is contractually obligated to provide service under a service contract.

(6) "Service contract reimbursement policy" or "reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by the service contract provider under the terms of the service contract issued by the provider.

Enacted by Chapter 203, 1992 General Session

### **31A-6a-102. Scope and purposes.**

(1) The purposes of this chapter are to:

(a) create a legal framework within which service contracts may be sold in this state;

(b) encourage innovation in the marketing and development of more economical and effective ways of providing services under service contracts, while placing the risk of innovation on the service contract providers rather than on consumers; and

(c) permit and encourage fair and effective competition among different systems of providing and paying for these services.

(2) Service contracts may not be issued, sold, or offered for sale in this state unless the provider has complied with this chapter.

(3) This chapter applies only to a service contract not otherwise exempted from this title by Section 31A-1-103.

Amended by Chapter 116, 2001 General Session

### **31A-6a-103. Requirements for doing business.**

(1) A service contract may not be issued, sold, or offered for sale in this state

unless the service contract is insured under a service contract reimbursement insurance policy issued by:

- (a) an insurer authorized to do business in this state; or
- (b) a recognized surplus lines carrier.

(2) (a) A service contract may not be issued, sold, or offered for sale unless the service contract provider completes the registration process described in this Subsection (2).

(b) To register, a service contract provider shall submit to the department the following:

- (i) an application for registration;
- (ii) a fee established in accordance with Section 31A-3-103;
- (iii) a copy of any service contract that the service contract provider offers in this state; and
- (iv) a copy of the service contract provider's reimbursement insurance policy.

(c) A service provider shall submit the information described in Subsection (2)(b) no less than 30 days before the day on which the service provider issues, sells, offers for sale, or uses a service contract or reimbursement insurance policy in this state.

(d) A service provider shall file any modification of the terms of a service contract or reimbursement insurance policy 30 days before the day on which it is used in this state.

(e) A person complying with this chapter is not required to comply with:

- (i) Subsections 31A-21-201(1) and 31A-23a-402(3); or
- (ii) Chapter 19a, Utah Rate Regulation Act.

(3) (a) Premiums collected on a service contract are not subject to premium taxes.

(b) Premiums collected by an issuer of a reimbursement insurance policy are subject to premium taxes.

(4) A person marketing, selling, or offering to sell a service contract for a service contract provider that complies with this chapter is exempt from the licensing requirements of this title.

(5) A service contract provider complying with this chapter is not required to comply with:

- (a) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- (b) Chapter 7, Nonprofit Health Service Insurance Corporations;
- (c) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
- (d) Chapter 9, Insurance Fraternal;
- (e) Chapter 10, Annuities;
- (f) Chapter 11, Motor Clubs;
- (g) Chapter 12, State Risk Management Fund;
- (h) Chapter 13, Employee Welfare Funds and Plans;
- (i) Chapter 14, Foreign Insurers;
- (j) Chapter 19a, Utah Rate Regulation Act;
- (k) Chapter 25, Third Party Administrators; and
- (l) Chapter 28, Guaranty Associations.

Amended by Chapter 345, 2008 General Session

### **31A-6a-104. Required disclosures.**

(1) A service contract reimbursement insurance policy insuring a service contract that is issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the service contract provider to perform under the contract, the issuer of the policy shall:

(a) pay on behalf of the service contract provider any sums the service contract provider is legally obligated to pay according to the service contract provider's contractual obligations under the service contract issued or sold by the service contract provider; or

(b) provide the service which the service contract provider is legally obligated to perform, according to the service contract provider's contractual obligations under the service contract issued or sold by the service contract provider.

(2) (a) A service contract may not be issued, sold, or offered for sale in this state unless the service contract contains the following statements in substantially the following form:

(i) "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. Should the provider fail to pay or provide service on any claim within 60 days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the Insurance Company."; and

(ii) "This service contract or warranty is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."

(b) A service contract or reimbursement insurance policy may not be issued, sold, or offered for sale in this state unless the contract contains a statement in substantially the following form, "Coverage afforded under this contract is not guaranteed by the Property and Casualty Guaranty Association."

(3) A service contract shall:

(a) conspicuously state the name, address, and a toll free claims service telephone number of the reimbursement insurer;

(b) identify the service contract provider, the seller, and the service contract holder;

(c) conspicuously state the total purchase price and the terms under which the service contract is to be paid;

(d) conspicuously state the existence of any deductible amount;

(e) specify the merchandise, service to be provided, and any limitation, exception, or exclusion;

(f) state a term, restriction, or condition governing the transferability of the service contract; and

(g) state a term, restriction, or condition that governs cancellation of the service contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder or service contract provider.

(4) If prior approval of repair work is required, a service contract shall conspicuously state the procedure for obtaining prior approval and for making a claim, including:

(a) a toll free telephone number for claim service; and

(b) a procedure for obtaining reimbursement for emergency repairs performed

outside of normal business hours.

(5) A preexisting condition clause in a service contract shall specifically state which preexisting condition is excluded from coverage.

(6) (a) Except as provided in Subsection (6)(c), a service contract shall state the conditions upon which the use of a nonmanufacturers' part is allowed.

(b) A condition described in Subsection (6)(a) shall comply with applicable state and federal laws.

(c) This Subsection (6) does not apply to a home warranty contract.

Amended by Chapter 297, 2011 General Session

**31A-6a-105. Prohibited acts.**

(1) Except as provided in Subsection 31A-6a-104(2), a service contract provider may not use in its name, a contract, or literature:

(a) any of the following words:

(i) "insurance";

(ii) "casualty";

(iii) "surety";

(iv) "mutual"; or

(v) another word descriptive of the insurance, casualty, or surety business; or

(b) a name deceptively similar to the name or description of:

(i) an insurance or surety corporation; or

(ii) another service contract provider.

(2) A service contract provider or the service contract provider's representative may not:

(a) make, permit, or cause to be made a false or misleading statement in connection with the sale, offer to sell, or advertisement of a service contract; or

(b) deliberately omit a material statement that would be considered misleading if omitted, in connection with the sale, offer to sell, or advertisement of a service contract.

(3) A bank, savings and loan association, insurance company, or other lending institution may not require the purchase of a service contract as a condition of a loan.

(4) Except for a bank, savings and loan association, industrial bank, or credit union, a service contract provider may not sell, or be the obligated party for:

(a) a guaranteed asset protection waiver, unless registered with the commissioner under Chapter 6b, Guaranteed Asset Protection Waiver Act;

(b) a debt cancellation agreement, unless licensed by the commissioner; or

(c) a debt suspension agreement, unless licensed by the commissioner.

Amended by Chapter 274, 2010 General Session

**31A-6a-106. Recordkeeping requirements.**

(1) (a) All service contract providers shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(b) A service contract provider's accounts, books, and records shall include:

(i) copies of all service contracts issued;

(ii) the name and address of each service contract holder; and

(iii) claims files.

(c) Service contract providers shall retain all records pertaining to each service contract holder for at least three years after the specified period of coverage has expired.

(2) A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to contract holders in this state.

(3) Service contract providers shall make all accounts, books, and records concerning transactions regulated under this chapter or other pertinent chapters available to the commissioner for the purpose of examination as provided in Sections 31A-2-203 and 31A-2-204.

Enacted by Chapter 203, 1992 General Session

**31A-6a-107. Cancellation of reimbursement insurance.**

The issuer of a reimbursement insurance policy may not cancel the policy until a notice of cancellation in accordance with Section 31A-21-303, 31A-21-304, or 31A-21-305 has been mailed or delivered to the commissioner and to each insured provider. The cancellation of a reimbursement policy may not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the cancellation.

Amended by Chapter 10, 1997 General Session

**31A-6a-108. Obligation of reimbursement insurance issuers.**

Providers under this chapter are considered to be the agent of the issuer of the reimbursement insurance for purposes of Section 31A-23a-410. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the issuer of the reimbursement insurance of the other providers.

Amended by Chapter 298, 2003 General Session

**31A-6a-109. Enforcement provisions.**

Anyone violating of any of the provisions of this chapter or any rule made pursuant to the grant of rulemaking authority under this title may be assessed an administrative forfeiture equal to two times the amount of any profit gained from the violation. In addition an administrative forfeiture may be assessed for each violation not to exceed \$1,000 per violation. If the violations are continuing, or are of a serious nature, or a person's business practices in connection with the solicitation, sale, offering for sale, or performance under a service contract subject to this chapter, constitute a danger to the legitimate interests of consumers or the public, the commissioner may enjoin the person from soliciting, selling, or offering to sell service contracts in this state either permanently or for a stated period of time.

Enacted by Chapter 203, 1992 General Session

**31A-6a-110. Rulemaking.**

(1) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules necessary to assist in the enforcement of this chapter.

(2) The commissioner may by rule or order, after a hearing, exempt certain service contract providers or service contract providers for a specific class of service contracts that are not otherwise exempt under Subsection 31A-1-103(3) from any provision of this title. The commissioner may order substitute requirements on a finding that a particular provision of this title is not necessary for the protection of the public or that the substitute requirement is reasonably certain to provide equivalent protection to the public.

Amended by Chapter 382, 2008 General Session